

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
EAGLE LAKE FIELD OFFICE

**CATEGORICAL EXCLUSION DOCUMENTATION**

**Bly Tunnel Bypass Flow Valve Closure**

**A. Background**

**NEPA File No.:** DOI-BLM-CAN050-2012-14-CX

The Bureau of Land Management (BLM), Eagle Lake Field Office has current ownership and management responsibility of the Bly Tunnel (portal to portal). This structure, a once privately owned and federally permitted trans-basin water diversion tunnel, was built from 1921-1923 as a conveyance facility for the diversion of surface water from Eagle Lake to the Honey Lake Basin for agricultural purposes. After many years of non-use, in 1959 the water rights associated with this diversion were revoked by the State Water Resources Control Board (SWRCB). In 1973, the BLM cancelled the right-of-way for the tunnel crossing public lands on the grounds of non-use and lack of water rights. After numerous failed attempts to stop the interception and diversion of percolating Eagle Lake Basin water into the tunnel, the BLM constructed a permanent concrete plug in 1986. A valve was installed in this cement plug to provide a bypass flow to meet presumed legal water rights of downstream users authorized to appropriate water from Willow Creek for irrigation needs.

The opinion of the SWRCB on the legal basis for releasing water from the valve has varied over time. However, on December 21, 2011, the BLM received a definitive statement from the SWRCB in a letter informing the BLM Field Manager that the continued release of water constitutes a waste or unreasonable use of water, and constitutes an unreasonable method of diversion. Unreasonable waste or use of water and an unreasonable method of diversion is forbidden by the California Constitution Article 10, Section 2 and of the California Water Code Section 100. It is also inconsistent with BLM Water Policy in 7250.06A and 06B which states:

- A. *Water Policy: The water policy of the BLM is that the States have the primary authority and responsibility for the allocation and management of water resources within their own boundaries, except as otherwise specified by Congress on a case-by-case basis.*
- B. *Implement Water Policy: In order to implement the BLM water policy of State water resources primacy, Bureau personnel shall:*
  - 1. *Cooperate with State governments under the umbrella of State law to protect all water uses identified for public land management purposes.*
  - 2. *Comply with applicable State law, except as otherwise specifically mandated by Congress, to appropriate water necessary to manage public lands for the purposes intended by Congress.*

## **B. Description of Proposed Action**

The BLM proposes to close the valve on the Bly Tunnel Bypass in January 2012. Closing the valve will entail BLM personnel entering the access portal and walking up-tunnel to the cement plug and turning the two valve stems in the “off” position with a large wrench. Once water is stopped, a visual inspection of the outlet pipe will confirm water passage has ceased.

Closing the valve will stop the release of a small amount of intercepted subsurface water flowing into the Willow Creek drainage. A manmade ditch, on private lands, carries the water from the tunnel outlet for about 1.2 miles before it’s confluence with Willow Creek. Flow measurements taken at the tunnel outlet in 2011 document flows of about 1.12 cubic feet per second (cfs).

## **C. Rationale**

Despite earlier concerns expressed by the California Department of Fish and Game (CDFG) about potential impacts of closing the valve to downstream water resources in Willow Creek (CDFG September 8, 2009 letter to BLM), the CDFG has dismissed that concern and has asked the SWRCB to support valve closure (CDFG October 3, 2011 letter to SWRCB).

The SWRCB, in the letter received on December 21, 2011 also reversed their earlier opinion that stated downstream (tunnel) water rights exist. The SWRCB has now issued an opinion that the downstream users have no right to divert or use water flowing from the tunnel.

Potential issues raised on the validity of water rights are outside the jurisdictional authority of the Bureau of Land Management and would thereby be brought forth and resolved by the Water Resource Board and the Court system of the State of California.

Closing the valve will have no impact to Endangered Species Act (ESA) listed species nor will it affect the historic character of the tunnel. The California State Historic Preservation Office visited the site on September 15, 2009 and determined that flowing water was not needed to maintain the character of this historic landmark. Closing the valve will facilitate continued study of the water balance of Eagle Lake. This is one part of a larger investigations being undertaken by the BLM and others to better understand and describe the water budget of Eagle Lake.

## **D. Land Use Plan Conformance**

The Proposed Action is in conformance with the Eagle Lake Resource Management Plan, 2008 because it requires compliance with applicable BLM policy and federal and state laws, including fish and wildlife and water laws, and supports scientific investigations conducting monitoring and assessment of resource conditions.

## **E. Compliance with the National Environmental Policy Act**

The Proposed Action is a categorically excluded action pursuant to U.S. Department of the Interior 516 DM 2 Appendix 1:

1.6 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

And U.S. Department of the Interior 516 DM 11.9:

A. Fish and Wildlife. 2. Minor modification of water developments to improve or facilitate wildlife use (e.g., modify enclosure fence, install flood valve, or reduce ramp access angle).

Before any non-Energy Act CX is used, it must have sufficient review to determine if any extraordinary circumstances apply (516 DM 2, Appendix 2). None have been identified (see the attached NEPA Compliance Categorical Exclusion Review).

#### **F. Signature**

The categorical exclusion is appropriate for this action because there are no extraordinary circumstances potentially having effects that my significantly affect the environment. The Proposed Action has been reviewed, and none of the extraordinary circumstances described in 516 DM, Appendix 2 apply (see attached Review of Extraordinary Circumstances).

The Proposed Action has been scoped by an interdisciplinary team of specialists in the Eagle Lake Field Office and there were no issues or unresolved conflicts identified with the Proposed Action. After review of the above possible exemptions by an interdisciplinary team of specialists, I have determined that the above described project is a categorical exclusion, in conformance with the Eagle Lake RMP, and does not require further NEPA analysis.

Approved By: \_\_\_\_\_

Kenneth R. Collum,  
Eagle Lake Field Manager

\_\_\_\_\_  
Date

**SCREENING FOR CATEGORICAL EXCLUSIONS: EXTRAORDINARY CIRCUMSTANCES**

The following are extraordinary circumstances to a CX as outlined in 516 DM 2, Appendix 2. If any of the extraordinary circumstances are answered yes then further environmental analysis must be prepared (EA or EIS).

**Extraordinary circumstances exist for individual actions within CXs which may:**

YES NO

- ☐Y ☒N 2.1 Have significantly adverse effects on public health or safety.
- ☒Y ☒N 2.2 Have adverse effects on such unnatural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands, (EO 11990); floodplains (EO 11988); natural monuments; migratory birds; and other ecologically significant or critical areas.
- ☐Y ☒N 2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].
- ☐Y ☒N 2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- ☐Y ☒N 2.5 Establish a precedent for future action or represent a decision in principle about future actions with potential significant environmental effects.
- ☐Y ☒N 2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
- ☐Y ☒N 2.7 Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office.
- ☐Y ☒N 2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.
- ☐Y ☒N 2.9 Violate a Federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment.
- ☐Y ☒N 2.10 Have a disproportionately high and adverse effect on low income or minority populations (EO 12898)?
- ☐Y ☒N 2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007)?
- ☐Y ☒N 2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act EO 13112)?